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No. 259

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

ADOLPH KAUKAS and VERA KAUKAS, his wife,
Appellants,

vs.

CITY OF CHICAGO, a municipal corporation,
Appellee.

Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported in 27 Ill.2d 197, and is reproduced in Appendix I herein.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

On April 21, 1961, Adolph Kaukas and Vera Kaukas, his wife, brought an action for declaratory judgment in the Superior Court of Cook County to determine that a certain ordinance of the City of Chicago is invalid, being

in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, which provide that no private property shall be taken for public use without just compensation (Tr. 3; Abst. of Rec. 1-10). The trial court held the ordinance invalid and the plaintiff, City of Chicago, prosecuted an appeal to the Supreme Court of Illinois (Tr. 3; Abst. of Rec. 17-20).

The judgment of the Supreme Court of Illinois reversing the trial court was rendered on February 1, 1963 (Tr. 11), rehearing was denied by the Supreme Court of Illinois on March 27, 1963 (Tr. 12), and Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of Illinois on May 27, 1963 (Tr. 15-18).

Title 28 of the United States Code, Section 1257(2), provides that review may be had by appeal to the Supreme Court of the United States from a final judgment or decree rendered by the highest court of a state where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution of the United States and the decision is in favor of its validity. In the case at bar, the validity of a municipal ordinance was involved on the ground of its being repugnant to the Constitution of the United States, and the decision of the Supreme Court of Illinois was in favor of its validity (Tr. 5-10).

The following cases hold that for the purpose of jurisdiction of the Supreme Court of the United States a municipal ordinance is a state statute: *King Mfg. Co.* v. *Augusta,* 277 U.S. 100 (1928); *Jamison* v. *Texas,* 318 U.S. 413 (1943); *Breard* v. *Alexandria,* 341 U.S. 622 (1951).

Section 78.15-9(b) of the Municipal Code of the City of Chicago, enacted on June 20, 1956, provides that secondary exit by means of a glass panel door would be prohibited on and after January 1, 1962 (Tr. 3; Abst. of Rec. 4-6). The full text of the ordinances herein involved is set out in Appendix II herein.

QUESTION PRESENTED BY THIS APPEAL

(Tr. 17-18)

The following question is presented by this appeal: Where a municipal corporation has, for many years prior to 1956, issued building and remodeling permits to thousands of property owners for the construction of multiple dwellings in a certain manner, may the municipal corporation, under the guise of police power, pass an ordinance in 1956, to take effect five years later, compelling the owners of said properties to change the construction of the buildings at great expense to the owners, without providing to the owners of said buildings any compensation for the loss and expense in the reconstruction of same to comply with said ordinance, or is the ordinance invalid, being in violation of the Fifth Amendment to the Constitution of the United States which provides: "nor shall private property be taken for public use, without just compensation", which right is also protected by Section 1 of the Fourteenth Amendment to the Constitution of the United States and "due process of law" guaranteed by the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE.

On June 20, 1956, Section 78-15.9(b) was passed as a part of the Housing Code of the City of Chicago, said Section providing as follows:

> "**Glass panel exits prohibited after 5 years.** Five years after the effective date of this housing code, no exit in any building may be counted as a required exit for a family unit unless every family unit for which it is an exit has access to such exit without passing through any other family or rooming unit." (Tr. 3; Abst. of Rec. 6).

The Housing Code became effective January 1, 1957, and, therefore, Section 78-15.9(b) prohibits the use of glass panel doors as exits from January 1, 1962, and thereafter.

On February 2, 1961, the City of Chicago sent to the plaintiffs a letter that they would be in violation of Section 78-15.9(b) of the Municipal Code of the City of Chicago by the use of glass panel doors after January 1, 1962 (Tr. 3; Abst. of Rec. 6, 10). On April 21, 1961, the plaintiffs filed a Complaint in the Superior Court of Cook County to have the said Section 78-15.9(b) of the Municipal Code of the City of Chicago declared invalid (Tr. 3; Abst. of Rec. 1-10).

The plaintiffs, in their Complaint, alleged as follows (Tr. 3; Abst. of Rec. 9):

> "Section 78-15.9(b) of the Municipal Code of the City of Chicago is illegal and unconstitutional being vague and indefinite, arbitrary, discriminatory and confiscatory, outside of the police powers of the municipality, and is in direct violation of due process of law, as guaranteed to plaintiffs . . . by Section 1 of the Fourteenth Amendment to the Constitution of the

> United States, and denies plaintiffs equal protection of the laws as guaranteed to plaintiffs by Section 1 of the Fourteenth Amendment to the Constitution of the United States, . . . and is in direct violation of the Fifth and Fourteenth Amendments to the Constitution of the United States which provides that no private property shall be taken for public use without just compensation."

The trial court found (Tr. 3; Abst. of Rec. 18-19):

> "The 1956 ordinance in question provided no compensation to the owners of said buildings for the loss and expense in the reconstruction of same to comply with said ordinance."

The trial court found (Tr. 3; Abst. of Rec. 18):

> "That Section 78-15.9(b), in its application to buildings with such doors, constructed or remodeled prior to the enactment of said Section, is unreasonable, arbitrary and void as to glass panel doors which were legally and properly installed as exits prior to July 1, 1956, and properly maintained thereafter."

The Supreme Court of Illinois stated (Tr. 5-6) that the issue involved is whether Section 78.15.9(b) of the Municipal Code of the City of Chicago, enacted June 20, 1956, *effective five years later*, January 1, 1962, "made to apply to existing buildings, deprives the property owner of due process of law or deprives him of his property without just compensation." The Supreme Court of Illinois (Tr. 8) said:

> "The plaintiffs also contend that the ordinance deprives them of their property without just compensation. A short answer to this contention is found in *Goldblatt* v. *Town of Hempstead*, 369 U.S. 590, 8 L.Ed. 2d 130, 133 where the United States Supreme Court said in discussing a contention that an ordinance deprived property owners of their property without just

compensation, 'If this ordinance is otherwise a valid exercise of the town's police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional.' "

FEDERAL QUESTION IS SUBSTANTIAL

The trial court found (Tr. 3; Abst. of Rec. 18):

> "That Section 78-15.9(b), in its application to buildings with such doors, constructed or remodeled prior to the enactment of said Section, is unreasonable, arbitrary and void as to glass panel doors which were legally and property installed as exits prior to July 1, 1956, and properly maintained thereafter.
>
> "That there are from 7,000 to 10,000 buildings which had such doors prior to July 1, 1956, and in most of them the owners would be put to a large and substantial expense to comply with said ordinance, either by cutting new corridors through roooms, or erecting fire escapes where possible, provided the City permitted same. That tens of thousands of tenants would be discommoded or damaged during said work and by the change in their units."

The ordinance herein involved is not a police power measure.

The Housing Code was enacted by the City Council of the City of Chicago on June 20, 1956. It was provided that the Housing Code would go into effect on January 1, 1957. However, as to the "glass panel door" ordinance herein involved, it was provided that it should *not go into effect until five years later,* namely, January 1, 1962. The postponement of five years is conclusive evidence that the City of Chicago did not consider the "glass panel door" ordinance a police power measure, as a police power measure (which must involve health, safety or morals) cannot *by its very nature* wait for five years to take effect.

The five-year postponement conclusively belies the pretention of a police power measure. The truth of the matter was brought out by Sidney Smith, deputy commissioner of buildings for the City of Chicago, who was called as a witness on behalf of the City of Chicago (Tr. 3; Abst. of Rec. 61). Smith testified (Tr. 3; Abst. of Rec. 67-68):

> "The Housing Code was passed in 1956 after meetings by representatives of community organizations, the corporation counsel's office, representatives of the building industry, the commissioner of buildings, and myself. **The Housing Code, which contains the glass panel door provisions, was passed to allow Chicago to get federal housing funds for the urban renewal program.** The Federal Government had nothing to do with the glass panel door provisions. I was present at meetings when glass panel doors were discussed." (Bold face supplied).

Therefore, it is clear that the ordinance herein involved is merely *an architectural experiment* with one type of an exit as against another type of an exit, and nothing more. Obviously it is an arbitrary imposition upon property owners which destroys and confiscates vested property rights in violation of the rights guaranteed to the plaintiffs by the Federal Constitution.

Where it is asserted that a person has been deprived in a state court of a fundamental right secured by the Constitution of the United States, the Supreme Court of the United States makes an independent examination of the facts. *Craig* v. *Harney*, 331 U.S. 367 (1947); *Niemotko* v. *Maryland*, 340 U.S. 268 (1951); *Feiner* v. *New York*, 340 U.S. 315 (1951); *Napue* v. *Illinois*, 360 U.S. 264 (1959).

The Supreme Court of the United States has long ago established that the Fifth Amendment's command that private property shall not be taken for public use without just compensation is obligatory on the States. *Chicago B. & Q. R. Co.* v. *Chicago*, 166 U.S. 226, 241 (1897).

In the recent case of *Griggs* v. *County of Allegheny*, 369 U.S. 84 (1962), the Supreme Court of the United States held that even interference with the use of the plaintiff's property by passing airplanes amounted to a "taking", in a constitutional sense, for which compensation must be made. The Supreme Court of the United States pointed out "that the instant 'taking' was 'for public use' is not debatable", and the Court held that the County of Allegheny, a public body, was liable to the plaintiff for such "taking".

ORDER APPEALED FROM

The judgment of the Supreme Court of Illinois from which this appeal is prosecuted is set out in Appendix III herein.

Respectfully submitted,

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APPENDIX I

OPINION OF THE SUPREME COURT OF ILLINOIS

(Tr. 5-10)

Adolph Kaukas *et al.*, Appellees, *v.* The City of Chicago, Appellant, 27 Ill.2d 197.

Mr. Chief Justice Solfisburg delivered the opinion of the court:

The plaintiffs, Adolph Kaukas and Vera Kaukas, who were owners of an apartment building in Chicago, filed suit in the superior court of Cook County seeking a declaratory judgment holding that section 78—15.9(b) of the Chicago Municipal Code, which prohibited the use of glass panel doors as a secondary means exit, was invalid. The trial court entered a judgment holding that the ordinance was invalid as applied to buildings in which glass panel doors had been legally installed under the provisions of previous ordinances. The trial judge certified that the validity of a municipal ordinance was involved and the city has appealed directly to this court.

For many years the Chicago Municipal Code has provided that in all multiple dwellings there must be at least two public vertical means of exit leading to the main exit level of the building, which means of exit must be accessible from each dwelling unit. Prior to 1956 it was provided that for certain apartments a secondary means of exit might be by access to a second straiway through another apartment, provided that the door between the two apartments was equipped with a glass panel having a certain size and strength. The purpose of the glass panel was to enable the tenants of one apartment, whose primary means of exit might be barred by fire, to break the glass and either

reach through the opening and unlock the door from the other side, or step through the opening into another apartment which had another means of exit. In 1956 the Code was amended so as to prohibit the installation of glass panel doors as a secondary means of exit in any new construction of conversion. This provision was effective July 1, 1956. At the same time, the council enacted section 78—15.9(b) which provided that the glass panel doors could not be used in any building as a secondary means of exit after December 31, 1961. It is the latter provision with which we are concerned.

The issue here, as it was in *City of Chicago* v. *Miller*, No. 37328, adopted this term, is whether the city is empowered by any act of the legislature to enact such a provision, and further, whether such a provision, when made to apply to existing buildings, deprives the property owner of due process of law or deprives him of his property without just compensation.

The legislature has provided that municipalities may prescribe the strength and manner of constructing buildings, and may cause all buildings which are in a dangerous fire condition to be put in a safe fire condition. (Ill. Rev. Stat. 1959, chap. 24, pars. 23—70, 23—72.) There was considerable evidence in the present case dealing with the question of whether glass panel doors as a secondary means of exit are safe. We do not believe that it is necessary to go into this evidence in detail. In a verbal opinion, the trial judge stated that the evidence showed that there are many objections to a glass panel door as a secondary means of exit. For example, the tenants might not be familiar with the use of such a door and might be reluctant to break the glass and go into another tenant's apartment; persons could cut themselves on the broken glass; the door might be blocked by furniture; the tenants might not know how to reach the exit through the other apartment, etc. The

judge stated that he was satisfied from the evidence that a glass panel door exit was not a first class exit and was not as satisfactory as a direct means of exit. Our review of the abstract satisfies us that these findings were amply supported by the evidence.

The judge stated that there was no question in his mind but that the city had the power under the provisions of the Revised Cities and Villages Act to prohibit the use of glass panel doors in new construction as a reasonable exercise of the city's police power. The judge also stated that the legislature had given cities the power to make laws which affect existing buildings, but that there was a limit to that power, dependent upon whether the benefit to the public was sufficiently large in comparison to the cost to the owners. Although the present case involved only one building, the judge stated that he felt that the substantial expense to the owners of the thousands of buildings which would be affected by this ordinance rendered the ordinance unreasonable, arbitrary and unjust. We are of the opinion that the trial judge erred in this ruling. It is clear that a city may lawfully make building requirements applicable to buildings in existence at the time the ordinance was enacted, even though these buildings complied with the ordinance in effect at the time the new ordinance was enacted. (*Abbatte Bros.* v. *City of Chicago*, 11 Ill.2d 337; *City of Chicago* v. *Miller*, No. 37328, adopted this term.) The question in these cases is whether the public welfare demands retroactive application and whether the property owners affected suffer unreasonable exactions as compared with the resulting public benefits. The public has a right to the safest method of protection from fire which can be found and a municipality has the duty to provide such protection. (*City of Seattle* v. *Hinckley*, 40 Wash. 468, 82 Pac. 747.) The testimony of the witnesses here and the findings of the trial judge as expressed in his opinion show that glass

panel doors as a secondary means of exit are not as safe as a direct means of exit. We think it is clear that in view of this evidence and finding a reasonable basis exists for the determination by the city council that the public safety required application of this ordinance to existing buildings. The only remaining question, therefore, is whether the burden upon the property owners is so great compared to the public benefit that the ordinance must be held invalid. No hard and fast rules can be laid down in such cases. In *Abbatte Bros.* v. *City of Chicago*, 11 Ill.2d 337, we cited with approval *Adamec* v. *Post*, 273 N.Y. 250, 7 N.E.2d 120, where the New York court held that it was not unreasonable to give retroactive effect to a regulation requiring installation of modern sanitary and safety facilities where the alteration would cost $5,000 and the building was assessed at $13,500. In *Queenside Hills Realty Co.* v. *Saxl*, 328 U.S. 80, 90 L. ed. 1096, the United States Supreme Court upheld a New York statute providing that existing buildings must install certain new fire prevention equipment. The complaint filed in the trial court alleged that the building in question had a market value of about $25,000 and the cost of complying with the law would be about $7,500. The property owner's complaint seeking a declaration that the law was invalid was dismissed by the trial court and this dismissal was upheld by the Appellate Division and the Court of Appeals of New York. In the United States Supreme Court the property owner argued that its building was largely fireproof and that any fire hazard which would exist was adequately safeguarded by fire alarms, constant watchman service and other safety arrangements. The Supreme Court stated that the legislature might choose not to take the chance that human life will be lost and might adopt the most conservative course which science and engineering offer and held that it was for the legislature to decide what regulations are needed to reduce fire hazards to the minimum. The court pointed out

that many types of social legislation diminish the value of the property which is regulated and stated that in no case does the owner of a property acquire immunity against exercise of the police power because the property had been constructed in full compliance with the existing laws. The Supreme Court affirmed the judgment and held that there was no violation of due process of law.

In the present case it appears that the building was originally purchased for $36,000 and that by reason of various improvements, the plaintiffs had a total in excess of $59,000 invested in the building. The evidence is not clear as to how much it would cost to eliminate the glass panel doors and provide direct means of exit, but according to the evidence it can be said that the cost of compliance would be somewhere between $5,000 and $10,000. When this cost is measured against the total cost of the building and considered in connection with the fact that the installation of direct means of exit would render the building more safe and would protect the tenants from the danger of fire, we think it is clear that the ordinance is not unreasonable as applied to existing buildings and does not deprive the owners of their property without due process of law.

The plaintiffs also contend that the ordinance deprives them of their property without just compensation. A short answer to this contention is found in *Goldblatt* v. *Town of Hempstead*, 369 U.S. 590, 8 L. ed. 2d 130, 133, where the United States Supreme Court said in discussing a contention that an ordinance deprived property owners of their property without just compensation, "If this ordinance is otherwise a valid exercise of the town's police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional." As we have pointed out in this opinion, the ordinance is a reasonable exercise of the city's police powers. There is, therefore, no merit

to the contention that the ordinance deprives the owners of their property without just compensation.

In an attempt to support the judgment of the trial court, the plaintiffs also contend that the ordinance with which we are concerned is invalid because it violates section 73—1 of the Revised Cities and Villages Act. (Ill. Rev. Stat. 1959, chap. 24, par. 73—1.) We do not believe that it is necessary in this opinion to consider this contention at length. An identical contention was advanced by certain property owners in *City of Chicago* v. *Miller*, No. 37328, and we held in that case that section 73—1 granted municipalities the power to enact zoning ordinances and had nothing to do with the powers of municipalities to prescribe building regulations and restrictions.

As an alternative contention, plaintiffs argue that the city is estopped from enforcing the ordinance. The facts upon which this alleged estoppel is based are as follows. The plaintiff Vera Kaukas and her then husband, Mike Luke, bought the building in 1948 as joint tenants. After Mike's death Vera married the plaintiff Adolph Kaukas, and through a conveyance to a third party and a reconveyance, title became vested in Adolph and Vera as joint tenants in 1954. At the time the property was originally acquired by Vera, the building contained 12 apartments and 6 bathrooms. The doors leading from the first apartments to the rear apartments had glass panel doors. In 1956, before the present ordinance was enacted, the plaintiffs hired a contractor to remodel their building so as to provide private baths for each of the apartments in addition to other alterations. When they applied for a permit they stated that they desired to convert the building from a 6-apartment building to a 10-apartment building. The permit was issued and the work was completed at a cost in excess of $13,000. The plaintiffs contend that the city is estopped to complain about the use of the glass panel doors by reason

of the fact that the city had issued this permit and the plaintiffs had expended substantial sums in reliance thereon. In *City of Chicago* v. *Miller*, No. 37328, we reviewed the authorities with respect to the doctrine of estoppel as applied to municipal corporations and we do not believe that it is necessary in this opinion to repeat what was said there. The building in the present case originally contained 12 apartments and utilized glass panel doors as a secondary means of exit for the front apartments. In spite of the fact that the building contained 12 apartments at the time plaintiffs applied for the permit, plaintiffs represented to the building department of the city that the building contained only 6 apartments and stated that they wished to convert it to a 10-apartment building. In a colloquy between the court and counsel at the time this discrepancy appeared, counsel for the plaintiffs stated that it was necessary to represent to the building department that the building only contained 6 apartments at the time the permit was applied for because the records of the building department showed that the building originally had 6 apartments and that there had never been a permit issued authorizing the conversion to 12 apartments. Plaintiffs are in a poor position to urge the doctrine of estoppel when it appears that the permit which furnishes the basis for their contention was obtained by false representations. Furthermore, the building already contained glass panel doors as secondary exits at the time of the remodeling in 1956 and nothing in the permit specifically authorized a remodeling of the building so as to install this type of door. We are of the opinion that the city is not estopped to enforce this ordinance against the plaintiffs.

After a full consideration of all of the contentions advanced on this appeal, we are of the opinion that the trial court erred in holding the ordinance invalid. The judgment of the trial court is therefore reversed.

APPENDIX II

ORDINANCES OF THE CITY OF CHICAGO

(Tr. 3; Abst. of Rec. 4-6)

The City of Chicago authorized and permitted the use of glass panel doors in accordance with an ordinance enacted by the City Council of the City of Chicago on October 31, 1940, reading as follows:

> "48-54. In any multiple dwelling there shall be at least two public vertical means of exit leading to the main exit level of the building, accessible from each dwelling. Provided, however, that an apartment whose gross floor area does not exceed 1,000 square feet and having not to exceed six habitable rooms in an existing tenement house and which at the time of the passage of this ordinance had not access to two stairways, may have exit to a second stairway through another apartment, provided the door between the two apartments is equipped with a *glass panel not less than five feet high and twenty inches wide, the glass in such panel to be of not greater thickness than double strength American window glass, with the bottom of the same not less than eighteen inches above the floor.* . . ." (Emphasis supplied.)

The City Council of the City of Chicago also enacted, on May 13, 1952, and amended on December 28, 1945, the following ordinance:

> "60.1-4. Vertical means of exit. Buildings converted or remodeled as provided in this chapter must have for each dwelling unit access to two vertical means of exit, which may consist of either two stairways or one stairway and one stairway fire-escape, or one stairway and permit to remain as a second stairway the existing stairway leading from the first floor

to the second floor, so as to permit an exit for the new second floor apartment to a second stairway through another apartment, provided, the door between the two apartments is equipped with a *glass panel not less than five feet high and twenty inches wide, the glass in such panel to be of not greater thickness than double strength American window glass with the bottom of same not less than eighteen inches above the floor,* any or all of which may be altered, repaired, or replaced with material and in the size and forms permitted in the original structure thereof or with material and in forms of construction of equal or greater strength and fire resistance. . . ." (Emphasis supplied.)

On June 20, 1956, the City Council of the City of Chicago enacted a Housing Code which contains the following provisions:

"78-15.2. In buildings constructed prior to the effective date of chapter 67 to-wit: prior to December 30, 1949, every building shall have not less than the minimum number of exits required by section 67-4 but in such buildings

* * *

(c) an exit may be counted as a second required exit from a building even though access to such exit is through another family unit if the requirements of section 78-15.3 are met.

"78-15.3. A family unit or rooming unit which has an exit to a corridor or hall may count as its second required exit from the dwelling (if a second exit is required by section 67-4) a stairway or other approved exit access to which is available only by passing through another family unit if:

(a) access to such second exit in the other family unit is by means of an unobstructed *glass panel door which may be unlocked on the second exit side without the use of a key and which glass panel is at least five feet hight and twenty inches above the floor and is of a thickness not greater than double strength American window glass;* and if

(b) such glass panel door gives access to the second exit by passing through not more than one other family unit; there shall not be any door or other obstruction in the line of travel from a glass panel except the door or window at the exit which shall be readily openable without the use of a key from the inside; and if

c) not more than 1,000 square feet of habitable rooms in family units or rooming units count this glass panel door as a means of access to an exit." (Emphasis supplied.)

CONSTRUCTION OF GLASS PANELS PROHIBITED.

"78-15.9 (b). Glass panel exits prohibited after five years. Five years after the effective date of this housing code, no exit in any building may be counted as a required exit for a family unit unless every family unit for which it is an exit has access to such exit without passing through any other family or rooming unit."

APPENDIX III

JUDGMENT OF SUPREME COURT OF ILLINOIS

(Tr. 11)

Be it remembered, that, to-wit: on the 1st day of February, 1963, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

Adolph Kaukuas and Vera Kaukas, his wife, Appellees No. 37293 vs. City of Chicago, a municipal corporation, Appellant	Appeal from Superior Court Cook County 61 S 4145

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error.

Therefore, it is considered by the Court that for that error and others in the record and proceedings aforesaid the judgment of the Superior Court of Cook County in this behalf rendered, be reversed, annulled, set aside and wholly for nothing esteemed.

And it is further considered by the Court that the said appellant recover of and from the said appellees costs by it in this behalf expended to be taxed, and that it have execution therefor.

PROOF OF SERVICE OF JURISDICTIONAL STATEMENT

I, Harry G. Fins, counsel for appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that I served two copies of the foregoing Jurisdictional Statement on the adverse party, the City of Chicago, a municipal corporation, by delivering same to John C. Melaniphy, Corporation Counsel of the City of Chicago, at 511 City Hall, Chicago 2, Illinois, on the ..... day of July, 1963.

.....

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SUPREME COURT U. S.

Office-Supreme Court, U.S.
FILED
JUL 31 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER 1963 TERM.

No. 259

ADOLPH KAUKAS AND VERA KAUKAS, HIS WIFE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS.

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THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO 58

IN THE

Supreme Court of the United States

OCTOBER 1963 TERM.

No. 259

ADOLPH KAUKAS AND VERA KAUKAS, HIS WIFE,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS.

Appellee in the above-entitled case moves to dismiss on the ground that the question presented is so unsubstantial as not to need further argument.

STATEMENT.

The opinion of the Supreme Court of Illinois, 27 Ill. 2d 197 (Jurisdictional Statement, Appendix 1, p. 1a), by citing *Queenside Hills Realty Co.* v. *Saxl*, 328 U. S. 80 (1946) and *Goldblatt* v. *Town of Hempstead*, 369 U. S. 590 (1962), completely answers appellants' argument relative to the constitutional questions raised by appellants.

In the *Queenside* case, this court upheld a statute of the State of New York which provided that existing buildings

had to install certain new fire prevention equipment. It was there claimed that the building in question had a market value of about $25,000 and that the cost of complying with the statute would be about $7,000. This court said (328 U. S. at 82):

> "Little need be said on the due process question. We are not concerned with the wisdom of this Legislation or the need for it. [citation] Protection of the safety of persons is one of the traditional uses of the police power of the State. Experts may differ as to the most appropriate way of dealing with fire hazards in lodging houses. Appellant, indeed, says that its building, far from being a fire-trap, is largely fireproof; and to the extent that any fire hazards exist, they are adequately safeguarded by a fire alarm system, constant watchman service, and other safety arrangements. But the legislature may choose not to take the chance that human life will be lost in lodging house fires and adopt the most conservative course which science and engineering offer. It is for the legislature to decide what regulations are needed to reduce fire hazards to a minimum. . . . *But in no case does the owner of property acquire immunity against exercise of the police power because he constructed it in full compliance with the existing laws.*" (Emphasis added.)

In the *Goldblatt* case, the Town of Hempstead enacted an ordinance regulating dredging and pit excavating on property within its limits. Such ordinance prevented excavating below the water table and the enclosure of such excavation. It was claimed that the ordinance prohibited a beneficial use to which the property had previously been devoted and resulted in a deprivation of property for public use without just compensation therefor. This court held (369 U. S. at 593): ". . . A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a

taking or an appropriation of property for the public benefit."

In the case at bar, appellee's ordinance does not prohibit appellants from devoting their building to its present use but merely directs that the fire hazard of a glass panel door exit be eliminated for the purpose of protecting people in appellants' building.

Such ordinance is of a less restrictive nature than the one upheld by this court in the *Goldblatt* case.

In order to sustain their case, appellants claim (Jurisdictional Statement, p. 6) that appellee's ordinance is not a police power measure because it did not become effective until 5 years after it was enacted.

Appellants made this same contention below, but both the trial court and the Supreme Court of Illinois considered it so frivolous that neither one passed upon it.

Since appellee's ordinance gave owners of property containing glass panel doors, used as a secondary means of fire exit, 5 years in which to eliminate such doors and provide another fire exit, such ordinance treated such owners fairly and equitably and gave them more than ample time to comply with such ordinance.

If appellee's ordinance did not give such owners ample time to make the changes necessary to eliminate the glass panel door exits but required immediate compliance, then appellee could be charged with unfairness and arbitrary action.

Appellants jump from their frivolous claim as to the 5 year period to an equally frivolous claim that appellee's ordinance "is merely an architectural experiment with one type of an exit as against another type of an exit, and nothing more" (Jurisdictional Statement, p. 7).

Such claim, as the 5 year one, was also not passed upon by either the trial court or the Supreme Court of Illinois.

As a matter of fact, as pointed out in the opinion of the Supreme Court of Illinois (Jurisdictional Statement, p. 2a):

> ". . . There was considerable evidence in the present case dealing with the question of whether glass panel doors as a secondary means of exit are safe. We do not believe that it is necessary to go into this evidence in detail. In a verbal opinion, the trial judge stated that the evidence showed that there are many objections to a glass panel door as a secondary means of exit. For example, the tenants might not be familiar with the use of such a door and might be reluctant to break the glass and go into another tenant's apartment; persons could cut themselves on the broken glass; the door might be blocked by furniture; the tenants might not know how to reach the exit through the other apartment, etc. The judge stated that he was satisfied from the evidence that a glass panel door exit was not a first class exit and was not as satisfactory as a direct means of exit. Our review of the abstract satisfies us that these findings were amply supported by the evidence."

The abstract mentioned above, which is part of the record herein (Tr. 3), shows that appellee's fire officials and fire safety experts testified to the fact that glass panel doors are dangerous to use, conducive to the spread of fires, and responsible for fire deaths (Abst. 30, 48, 51, 52, 54, 55, 64, 65, 66, 72, 73, 74, 75, 76, 77, 78).

The abstract also shows (p. 54) that no municipality in Illinois, except appellee, allowed glass panel doors as a means of exit.

The abstract also shows (pp. 67-68) that glass panel doors as a secondary means of exit were permitted for converting of multiple dwellings into more dwelling units as a World War II emergency measure; that the Housing Code, which contains the ordinance involved herein was passed in 1956 after public hearings conducted by appellee's

City Council Building and Zoning Committee, attended by representatives of community organizations, appellee's corporation counsel, representatives of the building industry, architects, the association of Commerce and Metropolitan Housing and Planning Council.

Appellee's ordinance is a necessary and reasonable fire protection measure enacted pursuant to appellee's police powers. The benefits that the public derives therefrom and to which it is entitled far outweigh any expense that appellants or any other property owners may be put to in complying therewith.

Such ordinance does not violate any constitutional guarantees.

Appellee respectfully submits that the appellants present no substantial question for the decision of this court and pray that its motion to dismiss the appeal be allowed.

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